

Part III - Administrative, Procedural, and Miscellaneous

Guidance Regarding Reporting for WHFITs

Notice 2006-29

SECTION 1. PURPOSE

This notice informs taxpayers of amendments that will be made to the final regulations under § 1.671-5 (Reporting Requirements for Widely Held Fixed Investment Trusts (WHFITs)), published in the Federal Register (71 FR 4002) on January 24, 2006, regarding certain reporting rules for non-mortgage widely held fixed investment trusts (NMWHFITs). Until amendments reflecting these changes are issued, taxpayers may rely on this notice.

SECTION 2. THE QUALIFIED NMWHFIT EXCEPTION

The final regulations under § 1.671-5 provide that if a NMWHFIT satisfies the qualified NMWHFIT exception in § 1.671-5(c)(2)(iv)(E), trustees and middlemen of those trusts are excepted from specific reporting requirements regarding market discount, bond premium, sales and dispositions, redemptions, and sales of trust interests. Section 1.671-5(c)(2)(iv)(E) provides that the qualified NMWHFIT exception is satisfied if a NMWHFIT has a start-up date that is before February 23, 2006, and the calendar year for which the trustee is reporting begins before January 1, 2011. Section 1.671-5(b)(19) defines a WHFIT's start-up date as the date on which substantially all of

the assets have been deposited with the trustee of the WHFIT.

Since the issuance of the § 1.671-5 final regulations, a number of comments have been received requesting that the definition of start-up date be clarified with respect to the qualified NMWHFIT exception and that the qualified NMWHFIT exception be extended to NMWHFITs created a certain period of time on or after February 23, 2006.

In response, the Treasury Department and the Internal Revenue Service intend to amend § 1.671-5(c)(2)(iv)(E) to provide that if, prior to February 23, 2006, both: (1) the registration statement of a NMWHFIT becomes effective under the Securities Act of 1933, as amended (15 U.S.C. 77a, et seq.); and (2) trust interests are offered for sale to the public, the NMWHFIT will be considered to have a start-up date that satisfies the qualified NMWHFIT exception. Section 1.671-5(c)(2)(iv)(E) will also be amended to provide that if, on or after February 23, 2006 and before June 1, 2006, both: (1) the registration statement of the NMWHFIT becomes effective under the Securities Act of 1933; and (2) trust interests are offered for sale to the public, the NMWHFIT will be considered to have a start-up date that satisfies the qualified NMWHFIT exception, provided that the NMWHFIT is fully funded before August 1, 2006.

SECTION 3. ELIGIBILITY FOR THE NMWHFIT SAFE HARBOR AND SIMPLIFIED REPORTING FOR EQUITY TRUSTS UPON THE SALE OF A TRUST INTEREST

Section 1.671-5(f)(1)(i) provides that if substantially all of a NMWHFIT's income is from dividends (as defined in § 6042(b) and the regulations thereunder) or interest (as defined in § 6049(b) and the regulations thereunder) and all trust interests have identical value and rights, a NMWHFIT may report under the safe harbor in § 1.671-5(f).

Section 1.671-5(c)(2)(v)(C) provides that a NMWHFIT is eligible for simplified reporting on the sale of a trust interest by a trust interest holder if substantially all of the income of the NMWHFIT consists of dividends and: (1) the trustee is required by the governing document of the NMWHFIT to make distributions of all cash (less reasonably required reserve funds) held by the NMWHFIT no less frequently than monthly; or (2) the qualified NMWHFIT exception is satisfied.

Commentators have requested clarification regarding whether trust sales proceeds received by a NMWHFIT will make the NMWHFIT ineligible for the safe harbor reporting rules in § 1.671-5(f) and the simplified reporting rules for sales of trust interests for equity trusts in § 1.671-5(c)(2)(v)(C). Commentators also noted the reference to § 6049(b) in § 1.671-5(f)(1)(i)(1) and that the definition of interest in § 6049(b) does not include interest that is exempt from tax under § 103 of the Internal Revenue Code. These commentators were concerned that if a NMWHFIT's income is from tax-exempt interest, the NMWHFIT would not be eligible to report under the NMWHFIT safe harbor reporting rules.

In response, the Service and the Treasury Department intend to amend § 1.671-5(f)(1)(i) to provide that trust sales proceeds received by the NMWHFIT, in addition to dividends and interest, will not cause the NMWHFIT to become ineligible for the NMWHFIT safe harbor in § 1.671-5(f). In addition, to address commentators' concerns regarding NMWHFITs whose income is from tax-exempt interest, § 1.671-5(f)(1)(i)(1) will be corrected to remove the references to § 6042(b) and § 6049(b) and the regulations thereunder. Section 1.671-5(c)(2)(v)(C) will be amended

to provide that trust sales proceeds received by the NMWHFIT in addition to dividend income will not cause an equity trust to be ineligible for the simplified reporting regarding sales of trust interests in § 1.671-5(c)(2)(v)(C).

SECTION 4. EFFECTIVE DATE

The effective date for amended § 1.671-5(c)(2)(iv)(E), § 1.671-5(c)(2)(v)(C) and § 1.671-5(f)(1)(i) will be the date of publication of those amendments in the Federal Register. Taxpayers, however, may apply those amendments as of January 24, 2006.

SECTION 5. DRAFTING INFORMATION

The principal author of this notice is Faith P. Colson of the Office of Associate Chief Counsel (Passthroughs & Special Industries). For further information regarding this notice contact Faith P. Colson at (202) 622-3060 (not a toll-free call).